6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA-R10-RCRA-2018-0661; FRL-9414-02-R10]

Hazardous Waste Management System; Final Exclusion for Identifying and Listing Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) (also, "the Agency "or "we" in this preamble) is granting a petition submitted by Emerald Kalama Chemical, LLC, in Kalama, Washington to exclude (or "delist") up to 3,500 cubic yards of U019 (benzene) and U220 (toluene) industrial wastewater biological solids (IWBS) per year from the list of Federal hazardous wastes under the Resource Conservation and Recovery Act.

DATES: This final rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

ADDRESSES: The EPA has established a docket for this action under Docket ID No. **EPA–R10–RCRA–2018–0661.** All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through www.regulations.gov. Due to restrictions related to COVID–19, docket materials are not available in hard copy form at this time. If you have further questions concerning docket materials, we recommend you telephone Dr. David Bartus at (206) 553–2804.

FOR FURTHER INFORMATION CONTACT: Dr. David Bartus, EPA, Region 10,

1200 6th Avenue, Suite 155, M/S 15–H04, Seattle, Washington 98070; telephone number: (206) 553-2804; e-mail address: bartus.dave@epa.gov.

As discussed in Section V of this document, the Washington State Department of Ecology is making a separate but parallel decision regarding the Petitioner's petition under state authority. Information on Ecology's action may be found at https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Industrial-facilities-permits/Emerald-Kalama-Chemical.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

Emerald Kalama Chemical, LLC located in Kalama, Washington submitted a petition to the EPA to exclude (or "delist") an annual volume of up to 3,500 cubic yards of U019 (benzene) and U220 (toluene) industrial wastewater biological solids (IWBS) hazardous waste per year from the list of hazardous waste set forth in 40 CFR 261.33. The EPA published a proposed exclusion and request for comment at 87 FR 3053 (January 20, 2022). After consideration of comments received on the EPA's proposed exclusion, the EPA is finalizing with certain changes responsive to public comment as described in the following section.

II. EPA's Evaluation of Public Comments

The EPA received six sets of comments on the proposed exclusion, two of which appear to be duplicate. One set of comments was received directly by the EPA from the Petitioner rather than through regulations.gov. The EPA has placed this comment in the

docket.

Comment 1. This commenter raised issues relating to communicable waterborne diseases and impacts on the costs of health care.

Response 1. While the EPA appreciates the comment, the EPA lacks authority to consider communicable disease vectors associated with wastes subject to the Resource Conservation and Recovery Act. The commenter also recommended that a continuous monitoring or audit mechanism along with a public communication plan through an email or push notification should be in place. The EPA notes that Condition 3 includes detailed verification sampling and analysis requirements, and a provision that the Petitioner must provide the EPA with an annual report containing the results of verification testing. These data can be made available to interested members of the public through the Freedom of Information Act. Given this, the EPA does not believe that a public communications plan as recommended is necessary. No changes to the proposed exclusion are necessary based on this comment.

Comment 2. This commenter raised various issues related to benzene and toluene as listed hazardous wastes. The first point raised by this commenter relates to Table 5 in the proposed rulemaking, noting "Table 5 shows a fault in the test sampling. According to the outline of the case, Table 5 provides the verification of constituents and compliance concentrations for the waste being addressed."

The second point raised by this commenter states "in many of the materials listed the total constituent concentrations exceeded 100%, providing inaccurate data."

The third point raised by the commenter raised various issues related to sampling and analysis for benzene. These include the analytical detection limit used as DRAS input, consistency between benzene analytical data, testing for the characteristic of ignitability, and changes in physical state for benzene. The commenter noted that DRAS input for the detection limit for analysis of a TCLP extract of the waste for benzene is 0.5

mg/l, presumably on the basis of Table 1. This model input is used to calculate the actual risk of a modelled waste stream when analytical data are reported as non-detect at a specified level of detection. However, this number does not reflect the required analytical method sensitivity required for waste characterization data and for verification sampling and analysis – for these purposes, the method detection limits must be less than the compliance value, which for benzene is 0.166 mg/l for a TCLP extract of the waste. The actual waste characterization data provided by the Petitioner do in fact reflect a level of sensitivity (or detection limit) below the compliance value for benzene. The EPA does acknowledge there is some variability in the analytical data for most, if not all constituents of concern, which is to be expected. For benzene, all of the reported data are well below the calculated compliance level, and thus support the EPA's conclusion is that the candidate waste can be excluded from the applicable waste listings, subject to required verification sampling.

The fourth point raised by the commentor relates to the Petitioner's sampling of the candidate waste for hazardous characteristics (e.g., ignitability and toxicity), noting that there is no evidence of testing for the characteristic of ignitability based on the potential presence of benzene. This point also noted that benzene may exist in multiple physical phases (i.e., solid, liquid and gas), such that the concentration of benzene in the waste may vary depending on the state of benzene.

The fifth and final point raised by the commentor proposed applying a "cradle to grave" approach to the excluded waste, on the basis that such an approach, including consideration of transportation of the excluded waste, would be necessary to be protective with respect to benzene.

Response 2. Regarding the first point raised by the commentor, the comment appears to incorrectly interpret the data in Table 5 – these data are the output from the Delisting Risk Assessment Software (DRAS) model and represent the maximum

allowable concentration of constituents of concern in the candidate waste for the waste to meet the specified risk levels documented in Table 1 and thus can be excluded from the specific listed waste codes documented in the proposed rule. These data do not represent the actual concentration of any particular sample of the candidate waste. As discussed in the preamble of the proposed rulemaking, the Petitioner provided the EPA with extensive sampling and analysis of the candidate waste, which appear in the docket. The EPA has determined that no additional sampling of the candidate waste is necessary before finalization of the proposed exclusion.

Regarding the second point raised by the commentor, this statement applies to model output presented in Table 2, but not Table 5. See Footnote 2 to Table 2 and Section IV.B of the proposed rulemaking preamble for a more detailed discussion of this issue. No change is necessary to address this second point.

Regarding the third point raised by the commentor, the cited model input is used to calculate the actual risk of a modelled waste stream when analytical data are reported as non-detect at a specified level of detection. However, this number does not reflect the required analytical method sensitivity required for waste characterization data and for verification sampling and analysis – for these purposes, the method detection limits must be less than the compliance value, which for benzene is 0.166 mg/l for a TCLP extract of the waste. The actual waste characterization data provided by the Petitioner do in fact reflect a level of sensitivity (or detection limit) below the compliance value for benzene. The EPA does acknowledge there is some variability in the analytical data for most, if not all constituents of concern, which is to be expected. For benzene, all reported data are well below the calculated compliance level, and thus support the EPA's conclusion that the candidate waste can be excluded from the applicable waste listings, subject to required verification sampling. No change is warranted in response to this point.

Regarding the fourth point raised by the commentor, the EPA notes that under the

hazardous waste exclusion regulatory provisions of 40 CFR 260.22, a petitioner is not required to demonstrate a candidate waste does not exhibit a hazardous characteristic– rather, this authority is specific to granting relief for wastes that designate for one or more listed waste numbers, but not for characteristic wastes. As provided for under 40 CFR 260.22(a)(2), however, a waste excluded from applicable waste listings may in fact continue to be hazardous if it exhibits a characteristic. Independent of an approved delisting petition, a facility is always responsible for demonstrating through direct testing or process knowledge that the waste does not exhibit a hazardous characteristic. The EPA notes, however, that since the waste characterization data provided by the Petitioner document that benzene is present only at sub-parts-per-million levels, a level far below the corresponding toxicity characteristic regulatory level and similarly well below the level that would cause the waste to exhibit the characteristic of ignitability, the waste is not expected to ever exhibit either characteristic. Similarly, the very low concentration of benzene strongly supports a conclusion that benzene will not appear as a separate phase, whether solid or liquid. No change is warranted in response to this point.

Regarding the fifth point raised by the commentor, the EPA notes that the purpose of the DRAS model used as the basis for this proposed exclusion is to demonstrate that when a candidate waste meets the conditions of the exclusion, and subject to a reasonable worst-case mismanagement scenario, the excluded waste does not pose an unacceptable risk to human health or the environment. In the case of the Petitioner's wastes, the reasonable worst-case mismanagement is defined as placement in an unlined landfill (See Section III.E of the proposed rulemaking preamble). Therefore, the EPA does not consider the "cradle to grave" approach to be necessary. No change is warranted in response to this point.

Comment 3. This commentor noted that while the proposed exclusion addressed benzene and toluene as listed hazardous wastes, benzene may also exhibit the toxicity

characteristic. The commentor further asserted that the Petitioner has failed to show how benzene "is suddenly no longer displaying such characteristics." The commenter acknowledged that benzene and toluene in small amounts may not cause extreme health reactions but noted that if multiple facilities release these constituents even in small amount, there may be a significant aggregate effect on the environment and wildlife, specifically including aquatic life and the Columbia River. The commentor encouraged the EPA to protect clean water and the endangered and threatened species in the Columbia. Finally, the commentor asserted that even if the proposed exclusion is finalized, facilities would still have to apply for permit "to dump these chemicals," creating more work for permitting agencies, and questioned whether permitting agencies have the resources to issue such permits and oversee their implementation.

Response 3. The EPA appreciates and shares the commentors concern for the environment, wildlife, and the Columbia River. In responding to questions raised regarding the waste potentially exhibiting the toxicity characteristic for benzene or toluene, please see the discussion of this issue in response to Comment 2 above, and the language appearing in Section II.B of the proposed rulemaking preamble. No change is warranted in response to this point.

Regarding the potential impact of multiple facilities discharging these constituents to the environment, the EPA notes this exclusion does not authorize discharge of any hazardous waste or constituents to the environment, and that even if the waste is mismanaged will not pose an unacceptable risk to health or the environment. Finally, the proposed exclusion is conditioned on the requirement that candidate wastes be disposed of in a solid waste landfill after the Petitioner demonstrates compliance with the exclusion criteria. Therefore, the excluded waste will not be dumped into the environment, and no discharge permits are required or are appropriate for management of the waste under the conditions of this exclusion. No change is warranted in response to

this point.

Comments 4 and 5. These two comments appear to be duplicative and are addressed concurrently.

In the first point raised by the commentor, the commentor objected to the proposed changes in the hazardous status of U019 (benzene) and U220 (toluene) and noted the Petitioner claims that these chemicals do not meet the criteria for which the EPA listed it. In the second point raised by the commentor, the commentor asked what assurance is available that the Petitioner will provide accurate and evidence-based information.

Responses 4 and 5. The EPA appreciates the concerns raised in this comment. With respect to the first point raised by the commentor, the commentor appears to reflect a misunderstanding of the effect of the proposed exclusion. The exclusion does not at all change the hazardous listing status of either benzene or toluene. Rather it reflects a determination that this candidate waste differs from benzene or toluene as listed as a discarded commercial chemical product, off-specification species, container residues or spill residues thereof, and that on this basis the candidate waste does not warrant continued management as a listed hazardous waste. The proposed exclusion does not in any way affect the listed status of benzene or toluene in the form of discarded commercial chemical compounds. No change is warranted in response to this point.

With respect to the second issue raised by the commentor, the EPA will, on an on-going basis, critically review records that the Petitioner must maintain demonstrating satisfaction of the conditions of the exclusion, including verification sampling and analysis. Where necessary or appropriate, the EPA may exercise its enforcement authorities under the Resource Conservation and Recovery Act to evaluate the Petitioners compliance with the exclusion, and to take such enforcement actions as may be necessary or appropriate. No change is warranted in response to this point.

Comment 6. The Petitioner provided comments that generally supported the proposed exclusion but raised concerns with implementation of the proposed sampling verification plan. In particular, the Petitioner asserted that the proposed verification sampling requirements will create logistical difficulties and inefficiencies and proposed specific modifications to the verification sampling requirements.

The first issue raised by the Petitioner's comment focused on the proposed requirement to sample IWBS at a rate of one sample per every ten roll-off boxes. The comment noted that this sampling frequency for non-cobalt constituents of concern will create logistical difficulties due to laboratory availability and turnaround time and will create a backlog of roll-off boxes that cannot be accommodated on-site while the Petitioner awaits the sampling results. More Specifically, given anticipated testing turnaround times, sampling results on the 10^{th} bin might not be available until the 13^{th} or 14^{th} bin has been filled. The Petitioner asserted that logistically, it is impossible to hold that many bins onsite while awaiting results and requested clarification on how to handle bins awaiting analysis and subsequent bins that are filled in the time between sampling of the 10^{th} bin and receipt of sampling results.

The second issue raised by the Petitioner noted that because there are no Washington State accredited laboratories to test for acetaldehyde, benzaldehyde, and formic acid (as noted in the proposed rule's preamble), the EPA is allowing the Petitioner to use laboratories that are accredited for other analytes to conduct sampling for acetaldehyde, benzaldehyde, and formic acid. However, the Petitioner also stated that there are not many labs in Washington State that can perform tests on the IWBS for acetaldehyde, benzaldehyde, and formic acid, especially in reasonable proximity to the Petitioner's facility.

Response 6. With respect to the first issue raised by this comment, the EPA appreciates the logical concerns raised by this comment. In response, the EPA agrees to

extend the required sampling frequency to one sample every 14th bin. With this change, the Petitioner may sample the 10th bin of each set of 14 bins but may manage the 11th through 14th bins according to the results of analytical data from the previous set of 14 bins. That way, results from the 10th bin will be available by the time the next set of 14 bins begins to be filled, eliminating the logistical challenges raised by this comment. Given that data provided by the Petitioner that for non-cobalt constituents, all waste constituents are expected to be well below the delisting exclusion limits, and that sampling of one bin per set of 14 as described will provide adequate assurance of compliance exclusion limits.

With respect to the second issue raised by this comment, the EPA acknowledges the Petitioner's concern, acetaldehyde, benzaldehyde, and formic acid are constituents of concern (COCs) for the reasons listed in proposed rule's preamble. As such, the EPA believes it is appropriate to require testing as outlined in the proposed rule. Because the EPA is already providing some relief by changing the sampling frequency from every 10th bin to every 14th bin, the EPA expects that the Petitioner will need confirmatory laboratory services only about 12 times per year. While the EPA appreciates the Petitioner's concern that suitable laboratories may not be located conveniently close to the facility, some additional burden to ship samples to a less conveniently located laboratory is warranted due to the EPA's determination that acetaldehyde, benzaldehyde, and formic acid are COCs, and that verification sampling data are essential for ensuring full compliance with delisting criteria. No change is warranted in response to this point.

III. Final Rule

A. What are the Terms of this Exclusion?

EPA is finalizing the proposed exclusion based on the Petitioner's petition with certain changes based on comments received, as discussed in Section II of this preamble.

B. When is the Delisting Effective?

This rule is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA, 42 U.S.C. 6930(b)(1), to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

C. How does this Action Affect the States?

This exclusion modification is being issued under the Federal RCRA delisting program. Therefore, only states subject to Federal RCRA delisting provisions would be affected. This exclusion is not effective in states that have received authorization to make their own delisting decisions. Moreover, the exclusion modifications may not be effective in states having a dual system that includes Federal RCRA requirements and their own requirements. The EPA allows states to impose their own regulatory requirements that are more stringent than the EPA's, under Section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. As noted in the notice of proposed rulemaking, Ecology is expected to make a parallel delisting decision under their separate state authority.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at http://www2.epa.gov/laws-regulations/laws-and-executive-orders.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is exempt from review by the Office of Management and Budget because it is a rule of particular applicability, not general applicability. The action approves a modification of an existing delisting petition under RCRA for the petitioned

waste at a particular facility.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is considered an Executive Order 13771 deregulatory action. This final rule maintains meaningful burden reduction afforded by the existing exclusion consistent with changes necessary to allow management of liquid effluents expected from startup and operation of Hanford's Waste Treatment and Immobilization Plant.

C. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*.) because it only applies to a particular facility.

D. Regulatory Flexibility Act

Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provision of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.).

F. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538) and does not significantly or uniquely affect small governments. The action imposes no new enforceable duty on any state, local, or tribal governments or the private sector.

G. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

H. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action applies only to a particular facility on non-tribal land. Thus, Executive Order 13175 does not apply to this action.

I. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

J. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

K. National Technology Transfer and Advancement Act

This action does not involve technical standards as described by the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272).

L. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high or adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The EPA has determined that this action will not have disproportionately high or adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

M. Congressional Review Act

This action is exempt from the Congressional Review Act (5 U.S.C. 801 *et seq*.) because it is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection; Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Dated: July 5, 2022

_____

Timothy Hamlin,

Director,

Land, Chemicals and Redevelopment Division.

For the reasons set out in the preamble, the EPA amends 40 CFR part 261 as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

2. Amend table 1 of appendix IX to part 261, by adding an entry for "Emerald Kalama Chemical, LLC" in alphabetical order to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

Table 1—Wastes Excluded From Non-Specific Sources

Facility	Address	Waste description
* * *	* *	* *
Emerald Kalama Chemical, LLC	Kalama, Washington	Wastewater treatment sludges, U019 (benzene) and U220 (toluene), generated at Emerald Kalama Chemical, LLC in Kalama, Washington at a maximum annual rate of 3,500 cubic yards per year. The sludge must be disposed of in a Subtitle D landfill which is licensed, permitted, or otherwise authorized by a state to accept the delisted wastewater treatment sludge. The exclusion becomes effective as of [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

		1. *Delisting Levels:* The constituent concentrations in a representative sample of the waste must not exceed the following levels. Total concentrations (mg/kg): Cobalt–62,300; Copper–463,000; Nickel–402,000; Benzene–276,000; Formic Acid–145,000. TCLP Concentrations (mg/l in the waste extract): Acetaldehyde–8.65; Barium–74.8; Copper–19.0; Nickel–29.2; Zinc–426; Benzaldehyde–6.08; Benzene–0.166; Benzoic Acid–5,000; Formic Acid–174; Benzyl Alcohol–125; Methanol–2,500; Phenol–375; Toluene–32.6. For the cobalt concentration in an extract of the waste, the exclusion is based on a demonstration of being within a cobalt budget defined as 2000 yds^3-mg/L. The Petitioner must calculate a running total starting with the effective date of this exclusion, and for each annual period. The running total shall be the sum of V_iC_i from i=1 to n, where: V_i = the volume of each batch in cubic yards (yd^3) C_i = the concentration of cobalt in a TCLP extract of each batch as per Condition 3 of this exclusion (mg/L) n = number of batches generated per year The Petitioner may conduct analysis for cobalt in an extract of the IWBS biosolids using the in-house method documented in "Cobalt Content In Sludge Extract Prepared According to Toxicity Characteristic Leaching Procedure (TCLP Cobalt), Revision 1.0, 11/24/2021 as placed in the rulemaking docket. The Petitioner may monitor the quantity of waste in each batch on a weight basis, converting to volume using a documented density of 0.67 tons/cubic yard. Provided that the cumulative cobalt budget remains less than the limit of 2000 yds^3-mg/L each batch will be considered in compliance with the exclusion limit for cobalt in an extract of the waste. However, any batch with a cobalt concentration greater than 1.99 mg/l in a TCLP extract of the waste cannot be managed under this exclusion and must remain subject to RCRA Subtitle C regulation. For the first year following the effective date of this exclusion, the Petitioner shall also document the density of IWBS for each batch of IWBS using ASTM Method ASTM E1109 - 19 or other equivalent method for purposes of verifying the 0.67 tons/cubic yard density. In addition, the Petitioner shall, on an on-going monthly basis, obtain analysis of one spit aliquot of the TCLP extract of IWBS biosolids for cobalt from an independent laboratory accredited by the Washington State Department of Ecology subject to the provision of Condition 2 below. 2. *Reporting*. Within 60 days of each anniversary of the effective date of this exclusion, or such other time as the EPA may approve in writing, the Petitioner shall provide a written report to the EPA documenting all data gathered regarding extraction and analysis of the extract for cobalt pursuant to the requirements of this exclusion, including the results of IWBS density measurement (first year report only) and the independent laboratory data for cobalt required by Condition 1. This report must be accompanied by the signed certification language appearing at 40 CFR 270.1(d)(1). After review of the density data presented in this report, the EPA may provide the Petitioner written approval to use some other numerical density than 0.67 tons/cubic yard for purposes of subsequent implementation of cobalt budget calculations pursuant to Condition 1. Following submission of the first annual report, the

		Petitioner may request relief from the spilt aliquot analysis requirement in Condition 1. Upon receipt of written approval of the request from the EPA, the Petitioner will be relieved of the spilt aliquot analysis requirement in Condition 1. 3. *Verification Testing:* To verify that the waste does not exceed the delisting concentrations specified in Condition 1 (except for cobalt), the Petitioner must collect and analyze one representative waste sample of every group of 14 roll-off boxes of wastewater treatment sludge, with the sample being obtained from the 10th box of each group of 14. If this sampling is expected to occur on a weekend or a Federal holiday, the Petitioner may substitute sampling of the 9th or 11th box in each batch of 14 boxes, with sampling of subsequent batches resuming the original schedule of sampling the 10th roll-off box of each batch of 14 boxes. The Petitioner may manage the 10th through 14th box of each group of 14 according to the verification sampling results of the previous group of 14 boxes pending receipt of verification sample results from the 10th box of the current set of boxes. The EPA notes that the Washington State Department of Ecology does not currently accredit any laboratory in the state of Washington for analysis of acetaldehyde, benzaldehyde, or formic acid in samples of solid material. The EPA will accept laboratory analyses result for acetaldehyde, benzaldehyde and formic acid from a laboratory that otherwise holds accreditations for all other analytes. For cobalt, sampling must occur once per batch (as defined by a single roll-off box). All sampling and analysis must be conducted using methods with appropriate detection concentrations and elements of quality control. Sampling data must be provided to the EPA no later 60 days following each anniversary of the effective date of this delisting, or such later date as the EPA may agree to in writing. No earlier than the first anniversary of the effective date of this delisting, the Petitioner may request that the EPA approve changes to the sampling frequency under this condition. Such a request must include data and analysis that demonstrated that the revised sampling frequency will ensure that all wastes subject to this exclusion will consistently satisfy the delisting exclusion criteria under Condition 1. The Petitioner must conduct all verification sampling according to a written sampling plan and associated quality assurance project plan which is approved in advance by the EPA that ensures analytical data are suitable for their intended use. The Petitioner's annual submission must also include a certification that all wastes satisfying the delisting concentrations in Condition 1 have been disposed of in a Subtitle D landfill which is licensed, permitted, or otherwise authorized by a state to accept the delisted wastewater treatment sludge. 4. *Changes in Operating Conditions:* The Petitioner must notify the EPA in writing if it significantly changes the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process. The Petitioner must handle wastes generated after the process change as hazardous until it has demonstrated that the wastes continue to meet the delisting concentrations in Condition 1, demonstrated that no new hazardous constituents listed in Appendix VIII of part 261 have been introduced into the manufacturing process or waste treatment process, and it has received written approval from the EPA that it may continue to manage the waste as non-hazardous. 5. *Data Submittals:* The Petitioner must submit the data obtained through verification testing or as

		required by other conditions of this rule to the Director, Land, Chemical, & Redevelopment Division, U.S. EPA Region 10, 1200 6th Avenue Suite 155, M/S 15-H04, Seattle, Washington, 98101 or his or her equivalent. The annual verification data and certification of proper disposal must be submitted within 60 days after each anniversary of the effective date of this delisting exclusion, or such later date as the EPA may agree to in writing. The Petitioner must compile, summarize, and maintain on-site for a minimum of five years, records of analytical data required by this rule, and operating conditions relevant to those data. The Petitioner must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). If the Petitioner fails to submit the required data within the specified time or maintain the required records on-site for the specified time, the EPA may, at its discretion, consider such failure a sufficient basis to reopen the exclusion as described in paragraph 5. 6. *Reopener Language*: (A) If, any time after disposal of the delisted waste, the Petitioner possesses or is otherwise made aware of any data relevant to the delisted waste indicating that any constituent is at a higher than the specified delisting concentration, then the Petitioner must report such data, in writing, to the Director, Land, Chemical, & Redevelopment Division, EPA Region 10 at the address above, or his or her equivalent, within 10 days of first possessing or being made aware of those data. (B) Based on the information described in Condition 4 or 6(A) and any other information received from any source, the EPA will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the EPA determines that the reported information does require Agency action, the EPA will notify the Petitioner in writing of the actions it believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the Petitioner with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. The Petitioner shall have 30 days from the date of the EPA's notice to present the information. (D) If after 30 days the Petitioner presents no further information or after a review of any submitted information, the EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the EPA's determination shall become effective immediately unless the EPA provides otherwise.
* * *	* *	* *

* * n* * *

[FR Doc. 2022-15009 Filed: 7/12/2022 8:45 am; Publication Date: 7/13/2022]